

# **APPENDIX C**

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18 UNITED STATES DISTRICT COURT  
19 NORTHERN DISTRICT OF CALIFORNIA  
20 SAN FRANCISCO DIVISION

21 WAYMO LLC,  
22 Plaintiff,  
23 v.  
24 UBER TECHNOLOGIES, INC.,  
25 OTTOMOTTO LLC; OTTO TRUCKING  
26 LLC,  
27 Defendants.  
28

Case No. 3:17-cv-00939-WHA

**DEFENDANTS UBER  
TECHNOLOGIES, INC. AND  
OTTOMOTTO LLC'S OBJECTIONS TO  
PLAINTIFF WAYMO LLC'S THIRD  
AMENDED RULE 26(A)(3) WITNESS  
LIST**

Trial Date: December 4, 2017

Waymo's witness list includes many witnesses not included on its Rule 26(a)(1) disclosures. For most of the witnesses whom Waymo did disclose under Rule 26, Waymo has drastically expanded the topics on which those witnesses are expected to testify beyond that which was timely disclosed. Defendants' specific objections are summarized below and a chart is attached as Exhibit A to assist the Court.<sup>1</sup>

### **Witnesses Not Previously Disclosed**

#### *Prabir Adarkar*

Defendants object to the calling of Mr. Adarkar, an Uber employee who was never previously disclosed in any of Waymo's Rule 26 disclosures. Mr. Adarkar was not timely disclosed, in violation of FRCP 26(a)(1), and should be excluded pursuant to FRCP 37(c)(1).

#### *Shawn Bananzadeh*

Defendants object to the calling of Mr. Bananzadeh, a Waymo employee who was never previously disclosed in any of Waymo's Rule 26 disclosures. Mr. Bananzadeh was not timely disclosed, in violation of FRCP 26(a)(1), and should be excluded pursuant to FRCP 37(c)(1). Waymo improperly added him to its "will call" list even though this Court has made it clear that if he is allowed to testify at all, if would only be in rebuttal: "If they use the 30(b)(6) deposition in any way before the jury, through an expert or directly read in, then he gets to come back and explain it in your rebuttal case, but not in your case-in-chief. In other words, you can't use him in your case-in-chief because he's a new witness." Tr., 10/26/17, 12:1-7.

*Kristin Gudjonsson<sup>2</sup>, Travis Bellanger, David Lawee, John Krafcik, Chelsea Bailey, Gerard Dwyer, Don Harrison, Jennifer Haroon, and Sasha Zbrozek*

Defendants object to the calling of these Waymo employees because they were not timely

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<sup>1</sup> These objections do not impact Defendants' ability to call any of the following witnesses that it has disclosed in its initial disclosures or learned about through Waymo's discovery on the topics that Defendants have identified in their witness lists.

<sup>2</sup> See below regarding objections to Mr. Brown as an "expert."

1 disclosed, in violation of FRCP 26(a)(1), and should be excluded pursuant to FRCP 37(c)(1).  
2 Waymo's failure to disclose them was not substantially justified. Moreover, Waymo knew that  
3 many of these employees were centrally involved in Mr. Levandowski's termination or the  
4 ensuing investigation yet failed to timely disclose them. In fact, the failure to disclose some  
5 employees involved in the investigation, such as Sasha Zbrozek, is notable, considering the  
6 evidence they possess undercutting Waymo's case.

7 *Bill Gurley*

8 If Mr. Gurley is permitted to testify, the Court has limited his testimony pursuant to  
9 Docket No. 1885, as follows: "Bill Gurley may testify as to his own percipient knowledge  
10 regarding his tenure as a member of Uber's board of directors (and possibly other facts) but may  
11 not speculate about matters outside of his percipient knowledge. No evidence or argument about  
12 Benchmark's lawsuit against Travis Kalanick will be permitted, except that defendants may use  
13 that lawsuit for impeachment purposes." Dkt. No. 1885 at 4.

14 *Arturo Gonzalez*

15 Defendants object to the calling of Mr. Gonzalez because he was not timely disclosed, in  
16 violation of FRCP 26(a)(1), and should be excluded pursuant to FRCP 37(c)(1).

17 Defendants further object to the anticipated testimony of Mr. Gonzalez pursuant to FRE  
18 403 because the prejudice his presence as a witness would cause Uber and Ottomotto  
19 substantially outweighs any probative value of his testimony. The Court has already suggested  
20 that as trial counsel, Mr. Gonzalez should not be associated with the legal work done in  
21 connection with the Uber-Otto transaction. Tr., 7/26/17, at 15-16. Moreover, Mr. Gonzalez  
22 should be excluded under FRE 602 because he was not involved in the underlying events of the  
23 dispute and therefore any testimony he could offer would not be relevant under FRE 402.

24 *Neel Chatterjee*

25 Defendants object to the calling of Mr. Chatterjee because he was not timely disclosed, in  
26 violation of FRCP 26(a)(1), and should be excluded pursuant to FRCP 37(c)(1).

27 Defendants further object to the anticipated testimony of Mr. Chatterjee, because the  
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1 prejudice his presence as a witness would cause Uber and Ottomotto substantially outweighs any  
 2 probative value of his testimony. Otto Trucking is no longer a defendant in this case, and  
 3 Goodwin Procter has never been *Uber*'s or *Ottomotto*'s counsel. Moreover, Waymo seeks to call  
 4 Mr. Chatterjee on litigation-related topics such as the "chain of custody of Anthony  
 5 Levandowski's personal laptops," which is unrelated to the underlying events of the dispute and  
 6 would pose a danger of confusing the issues before the jury.

7 *Matthew Blattmachr*

8 Defendants object to the calling of Mr. Blattmachr because he was not timely disclosed, in  
 9 violation of FRCP 26(a)(1). The proposed subject of his testimony is Mr. Levandowski's  
 10 ownership of other companies, including presumably including any links to Tyto LiDAR. But  
 11 Waymo has been pursuing Mr. Levandowski's links to Tyto LiDAR since close to the inception  
 12 of this case (if not prior to it) and its failure to disclose Mr. Blattmachr is not substantially  
 13 justified.

14 *Gautam Gupta*

15 Defendants object to the calling of Mr. Gupta because he was not timely disclosed, in  
 16 violation of FRCP 26(a)(1). Moreover any testimony about Uber's acquisition of Ottomotto is  
 17 unnecessarily cumulative and Uber's funding of Otto Trucking's business activities is irrelevant.  
 18 *See* FRE 402, 403.

19 **Witnesses For Whom Waymo Seeks to Introduce New Topics**

20 *John Bares*

21 Defendants object to the calling of Mr. Bares on the subject of "the acquisition of Otto;  
 22 and Mr. Levandowski's employment milestones" because these subjects were not identified by  
 23 Waymo in its initial disclosures. The omission is not substantially justified. In fact, Waymo took  
 24 Mr. Bares's deposition prior to the deadline for initial disclosures and questioned him on the very  
 25 topics it now seeks to include in his trial testimony.

1           *Gary Brown*<sup>3</sup>

2           Defendants object to the questioning of Mr. Brown on the subject of “Google/Waymo’s  
3 reasonable efforts to maintain the secrecy of its electronic systems, digital document storage  
4 repositories, and computer networks, including but not limited to the SVN server.” Brown is  
5 Waymo’s employee and it chose to only disclose him on the topic of Waymo’s forensic  
6 investigation into Mr. Levandowski, Mr. Kshirsagar, and Mr. Raduta, while choosing to disclose  
7 another witness on the topic of its efforts to maintain secrecy, Mr. Janosko. Waymo’s failure to  
8 disclose Mr. Brown on this topic is not substantially justified. Moreover, Mr. Brown’s deposition  
9 testimony reflects that he lacks personal knowledge about many of these subjects.

10           *Dmitri Dolgov*

11           Defendants object to the calling of Mr. Dolgov on the subject of “the Chauffeur Bonus  
12 Plan.” Mr. Dolgov is Waymo’s employee and it chose to only disclose him for other topics.  
13 Waymo’s failure to disclose this topic is not substantially justified.

14           *Pierre-Yves Droz*

15           Defendants object to the calling of Mr. Droz regarding “the confidentiality of its designs  
16 and measures to keep them secret, the contents of Waymo’s SVN server, and communications  
17 with Anthony Levandowski regarding Uber and formation of Otto.” Mr. Droz is a Waymo  
18 employee and Waymo only disclosed Mr. Droz on the topics of Waymo’s “development and  
19 operation of Waymo’s self-driving cars and autonomous vehicle technology, including LiDAR;  
20 [and] the design and development of certain of Waymo’s asserted trade secrets.” The newly  
21 proposed topics were known as subjects of this litigation to Waymo at the time of the disclosures  
22 and the failure to disclose them is not substantially justified.

23           *John Gardner*

24           Defendants object to Waymo questioning Mr. Gardner about “Ottomotto and Otto  
25 Trucking; the Uber-Otto acquisition; [and] Mr. Levandowski’s businesses,” or about “destruction  
26 of relevant evidence.” Before the initial disclosures were due, Waymo knew that Mr. Gardner

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27           <sup>3</sup> See below regarding objections to Mr. Brown as an “expert.”  
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1 served as counsel for Mr. Levandowski in connection with the Otto acquisition and related due  
 2 diligence and as a personal attorney for Mr. Levandowski. Its failure to disclose these new topics  
 3 is not substantially justified. Moreover, testimony about Mr. Levandowski's "businesses" should  
 4 be excluded to the extent it is irrelevant or unfairly prejudicial. *See* FRE 402, 403.

5 Defendants also object to Waymo questioning Mr. Gardner about "Tyto LiDAR," a topic  
 6 disclosed for this witness for the first time on November 15, 2017. Waymo has been pursuing the  
 7 issue of Mr. Levandowski's links to Tyto since at least April 2017—well before the initial  
 8 disclosures were due. Its failure to disclose Mr. Gardner on the topic is not substantially justified.

9 *Dan Gruver, Gaetan Pennecot, Asheem Linaval, Don Burnette, Soren Juelsgaard, and*  
 10 *Colin Sebern*

11 These witnesses are current Uber engineers who formerly worked at Waymo. They were  
 12 initially disclosed as potential witnesses by Waymo only concerning "matters that concern  
 13 misappropriation of trade secrets." Waymo now seeks to add for each of these witnesses  
 14 testimony about "the development of Waymo's self-driving car technology, including its  
 15 LIDAR." Waymo should be precluded from eliciting testimony beyond the disclosed topic of the  
 16 specific trade secrets alleged to have been misappropriated. Had Waymo wanted to question its  
 17 former employees about their work for Waymo, it timely could have and should have disclosed  
 18 that subject. Waymo's failure to disclose these topics is not substantially justified.

19 Defendants further object to the inclusion of testimony about Waymo's "planner  
 20 software" with respect to Mr. Burnette and "software" with respect to Mr. Juelsgaard and Mr.  
 21 Sebern. Software is not at issue in this case; permitting testimony on this topic would cause  
 22 unfair prejudice and pose a danger of confusing the issues before the jury.

23 *Jeff Holden*

24 Defendants object to Waymo's questioning of Mr. Holden regarding Uber's "autonomous  
 25 vehicle program before the Otto acquisition; negotiations with Mr. Levandowski regarding the  
 26 acquisition; Mr. Levandowski's consulting work; facts surrounding Mr. Levandowski's continued  
 27 employment with Uber and termination" because these were not timely identified in Waymo's  
 28 initial disclosures. Waymo only disclosed Mr. Holden on the topic of "matters that concern

misappropriation of trade secrets” but was aware of Mr. Holden’s role as a business person involved with the Otto acquisition well before the deadline for initial disclosures. Waymo’s failure to disclose these topics is not substantially justified.

*Travis Kalanick*

Defendants object to Waymo questioning Mr. Kalanick regarding the following topics:

Uber's solicitation of Google and Waymo employees; discussions with, knowledge about, Levandowski, discussions with the Board and Benchmark partners concerning the Otto acquisition, Mr. Levandowski, and the relationship between the facts surrounding this case and his termination; negotiations with Mr. Levandowski regarding the founding of Ottomotto and Otto Trucking, and Otto acquisition; the Uber-Otto acquisition; solicitation of Google/Waymo employees; . . . Levandowski's employment and continued employment at Uber; and destruction of relevant evidence.

Waymo only disclosed Mr. Kalanick as a potential source of testimony regarding the broad and unhelpful topic of “matters that concern misappropriation of trade secrets.” Certainly, given his role, Waymo knew or should have known Mr. Kalanick’s involvement in the acquisition of Otto and his negotiations with Mr. Levandowski. Waymo’s failure to disclose these topics is not substantially justified.

Moreover, any testimony regarding solicitation of Google/Waymo employees should also be excluded under Rules 402 and 403 because it is irrelevant, unfairly prejudicial, and will tend to confuse the jury.

Moreover, any testimony about Benchmark should be excluded pursuant to FRE 403 for the reasons stated in Defendants’ motion *in limine* (No. 24). Dkt. No. 1548.

*Anthony Levandowski*

In addition to Defendants’ already-briefed objections to the calling of Mr. Levandowski as unfairly prejudicial, Defendants object to Waymo questioning Mr. Levandowski on the following topics for which he was not disclosed in Waymo’s initial disclosures:

development of Waymo’s self-driving car technology, including its LIDAR designs and the development of Waymo’s trade secrets, engineering practices of Waymo and the LIDAR team regarding the confidentiality of its designs and measures to keep them secret, his



performance at Waymo, the contents of Waymo's SVN server, and communications with Google employees regarding Uber and formation of Otto; Uber's driverless car program; Uber's solicitation of Google and Waymo employees; the relationship between the facts surrounding this case and his termination; negotiations regarding the founding of Ottomotto and Otto Trucking, and Otto acquisition; the Uber-Otto acquisition; . . . Levandowski's employment and continued employment at Uber; and destruction of relevant evidence. Waymo further identifies those subjects identified in Waymo's Statement Regarding Questions it Intends to Ask Anthony Levandowski at Trial. Dkt. 835.

Waymo only identified Mr. Levandowski as a potential source of testimony regarding "matters that concern misappropriation of trade secrets." Given its allegations against Mr. Levandowski in the Complaint and Motion for Preliminary Injunction, Dkts. 23 & 24, Waymo knew that Mr. Levandowski had potentially relevant information about these other topics. Waymo's failure to disclose these topics is not substantially justified.

Moreover, any testimony regarding solicitation of Google/Waymo employees should also be excluded under Rules 402 and 403 because it is irrelevant, unfairly prejudicial, and will tend to confuse the jury.

*Brian McClendon, Emil Michael, Cameron Poetszcher, and Nina Qi*

Defendants object to the questioning of these witnesses regarding any topics that do not directly concern "matters concerning the misappropriation of trade secrets," the only disclosed subject for these witnesses. Although the new subjects for each witness identified by Waymo vary slightly, they have been all generally designated to testify about such topics as:

- "Negotiations with Levandowski regarding founding Ottomotto and Otto Trucking";
- "Contacts between Uber and Mr. Levandowski regarding the formation of Ottomotto/Otto Trucking";
- "Uber's solicitation of Google/Waymo employees";
- "The benefits Uber would obtain via those acquisitions";
- "the Uber-Otto acquisition";
- "Levandowski's employment and continued employment at Uber";

- “discussions with, knowledge about, Levandowski”;
- “discussions with the Board and Benchmark partners concerning the Otto acquisition, Mr. Levandowski”; and
- “the relationship between the facts surrounding this case and his termination.”

From well before the date initial disclosures were due, Waymo knew that each of these individuals was involved in a business role and the Otto acquisition. Its failure to timely identify these topics is not substantially justified.

Moreover, any testimony regarding solicitation of Google/Waymo employees should also be excluded under Rules 402 and 403 because it is irrelevant, unfairly prejudicial, and will tend to confuse the jury.

Moreover, any testimony about Benchmark should be excluded pursuant to FRE 403 for the reasons stated in Defendants’ motion *in limine* (No. 24). Dkt. No. 1548.

*Rhian Morgan*

Defendants object to Waymo’s questioning Ms. Morgan regarding the “founding and business of Ottomotto and Otto Trucking [and] Uber’s acquisition of Otto.” Waymo only disclosed Ms. Morgan as a potential source of testimony regarding “matters that concern misappropriation of trade secrets.” Waymo’s failure to disclose these topics is not substantially justified.

*Lior Ron*

Defendants object to Waymo questioning Mr. Ron about the “founding of Ottomotto and Otto Trucking; the Uber-Otto acquisition” and “the business and product development of Ottomotto and Otto trucking.” Before the initial disclosures were due, Waymo knew Mr. Ron was a co-founder of Otto and Otto Trucking and should have disclosed these topics then. Waymo’s failure to disclose these topics is not substantially justified.

*Brent Schwarz and Ognen Stojanovski*

Defendants object to Waymo’s questioning these witnesses about Tyto LiDAR, Otto’s acquisition of Tyto, or communications with Mr. Levandowski about Tyto. Waymo did not

1 disclose these topics in its initial disclosures. Waymo has been pursuing the issue of Mr.  
2 Levandowski's links to Tyto since at least April 2017. Waymo's failure to disclose these topics  
3 for these witnesses is not substantially justified.

4 *Bryan Salesky*

5 Defendants object to the calling of Mr. Salesky regarding "Mr. Levandowski's  
6 performance as a Google/Waymo employee" and "certain of Mr. Levandowski's communications  
7 with Uber prior to his departure from Google/Waymo." Mr. Salesky was only disclosed by  
8 Waymo as a witness having information about "matters that concern the development and  
9 operation of Waymo's self-driving cars and autonomous vehicle technology" and "matters that  
10 concern misappropriation of trade secrets by Defendants." Mr. Salesky was a senior Waymo  
11 employee during the events in question and the newly proposed topics were known as subjects of  
12 this litigation to Waymo at the time its initial disclosures were due. Waymo's failure to disclose  
13 these topics is not substantially justified.

14 *Chris Urmson*

15 Defendants object to the calling of Mr. Urmson regarding "Mr. Levandowski's  
16 performance as a Google/Waymo employee and circumstances surrounding his termination from  
17 Google; Chauffer Bonus Plan" and "Waymo valuation(s)." Mr. Urmson was only disclosed by  
18 Waymo as a witness having information about "matters that concern the development and  
19 operation of Waymo's self-driving cars and autonomous vehicle technology" Mr. Urmson was a  
20 senior Waymo employee—for a period the most senior—during the events in question, and the  
21 newly proposed topics were known as subjects of this litigation to Waymo at the time its initial  
22 disclosures were due. Waymo's failure to disclose these topics is not substantially justified.

23 *Salle Yoo*

24 Defendants object to Waymo's questioning Ms. Yoo about the "continued employment  
25 and termination of Anthony Levandowski." Waymo did not include this as a topic for Ms. Yoo in  
26 its initial disclosures despite being aware as of May 30, 2017, that Ms. Yoo signed the letter  
27  
28

1 terminating Mr. Levandowski.<sup>4</sup> Waymo's failure to disclose this topic is not substantially  
 2 justified. Moreover, any proposed testimony on the topic of the Stroz Report would be  
 3 unnecessarily cumulative under Rule 403.

4 *Rudy Kim and Eric Tate*

5 Defendants object to the calling of Mr. Kim and Mr. Tate because their testimony will be  
 6 cumulative and waste the jury's time. *See* FRE 403.

7 *Adam Bentley*

8 Defendants object to Mr. Bentley's testimony as unduly cumulative and likely to waste  
 9 the jury's time. *See* FRE 403.

10 *Max Levandowski and Daniel Ratner*

11 Defendants object to the calling of Mr. Levandowski and Mr. Ratner for any subjects  
 12 beyond the scope permitted by the Court in its October 26, 2017 ruling on Waymo's Motion to  
 13 Amend. *See* 10/26/2017 Hr'g at 13:9-14 ("You can add them to your list for trial, but it's limited  
 14 to testimony that came out of the Stroz report or something that was newly produced in that time  
 15 period after the Stroz report. And you cannot get off into other subjects in your case-in-chief.").

16 *Undisclosed Damages Testimony*

17 Waymo's November 12, 2017 Offer of Proof Regarding Reasonable Royalty Damages  
 18 suggests that ten witnesses who were either not disclosed or disclosed for other purposes by  
 19 Waymo will now become Waymo's damages witnesses. These witnesses include John Krafcik,  
 20 Dmitry Dolgov, Jennifer Haroon, Dan Chu, Nina Qi, Prabir Adarkar, Pierre-Yves Droz,  
 21 Lambertus Hesselink, and Jeff Holden. Defendants object to any such testimony that goes  
 22 beyond the witnesses and subjects timely disclosed pursuant to FRCP 26(a)(1).

23 *30(b)(6) Witnesses*

24 Defendants also object to any of Waymo's witnesses testifying about "the subjects of the  
 25 Rule 30(b)(6) topic(s) for which [they were] designated as Waymo's corporate witness" to the

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26  
 27 <sup>4</sup> In addition to being produced in this case, the termination and letter were widely reported in news. *See*  
 28 [https://www.washingtonpost.com/news/the-switch/wp/2017/05/30/uber-fires-star-engineer-anthony-levandowski-at-the-center-of-self-driving-car-battle/?utm\\_term=.58c08e1e3232](https://www.washingtonpost.com/news/the-switch/wp/2017/05/30/uber-fires-star-engineer-anthony-levandowski-at-the-center-of-self-driving-car-battle/?utm_term=.58c08e1e3232)

1 extent those topics go beyond the subjects disclosed in Waymo's initial disclosures. In addition  
 2 to being untimely, there is no guarantee that these witnesses even have personal knowledge over  
 3 those subjects. *See Cooper v. United Air Lines, Inc.*, 82 F. Supp. 3d 1084, 1096 (N.D. Cal. 2015).  
 4 The witnesses for which these subjects were added are Gary Brown, Dan Chu, Dmitri Dolgov,  
 5 Pierre-Yves Droz, David Lawee, and Jennifer Harroon.

#### 6 *Destruction of Relevant Evidence*

7 Waymo has added as a topic for numerous witnesses "the destruction of relevant  
 8 evidence." Any suggestion that an Uber witness destroyed relevant evidence should be excluded  
 9 under FRE 403. In the alternative, the Court should require Waymo to submit an offer of proof  
 10 before any such questioning and permit Uber the chance to respond.

#### 11 Experts

#### 12 *Paul French and Bruce Hartley*

13 Defendants object to any testimony from Waymo's "rebuttal" expert reports from French  
 14 and Hartley because their purpose is not "solely to contradict or rebut evidence on the same  
 15 subject matter identified by another [party's expert]." Fed. R. Civ. P. 26(a)(2)(D)(ii). Rebuttal  
 16 expert reports "are not . . . the proper place for presenting new arguments" and must be limited to  
 17 the opposition report's subject matter. *R&O Const. Co. v. Rox Pro Int'l Grp., Ltd.*, No. 2:09-CV-  
 18 01749-LRH-LR, 2011 WL 2923703, at \*2 (D. Nev. July 18, 2011). But instead of rebutting  
 19 Laykin's report, French's and Hartley's reports present new arguments on Google's reasonable  
 20 efforts to protect the alleged trade secrets' secrecy; a necessary element to trade secret  
 21 misappropriation. *Kirola v. City & Cty. of San Francisco*, No. C-07-3685 SBA (EMC), 2010 WL  
 22 373817, at \*2 (N.D. Cal. Jan. 29, 2010) ("[T]his expert opinion could not be considered rebuttal  
 23 evidence because its purpose was to support an element of the plaintiffs' . . . claim."). They also  
 24 provide additional information regarding the reliability of the forensic investigation conducted by  
 25 Gary Brown and Kristinn Gudjonsson and the soundness of the conclusions Mr. Brown and Mr.  
 26 Gudjonsson reached. Any testimony concerning these opinions, on which Waymo bears the  
 27 burden of proof, should have been disclosed in Waymo's opening reports and are untimely on  
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1 rebuttal. Preclusion of the French and Hartley's testimony on these topics is "automatic and  
2 mandatory" since Waymo cannot show that their failure to comply was "justified or harmless."  
3 *R&O*, 2011 WL 2923703, at \*3.

4 *Jim Timmons*

5 Defendants object to the aspects of Mr. Timmons's proposed testimony as set forth in  
6 their *Daubert* Motion to Exclude One of Three Opinions Offered by Waymo Expert Jim  
7 Timmons. Dkt. No. 1612. The Court reserved ruling on this *Daubert* Motion. Dkt. No. 1885 at  
8 5.

9 *Lambertus Hesselink*

10 Defendants object to Dr. Hesselink's testimony found in paragraphs 65 to 72 of his expert  
11 report as set forth in Otto Trucking's *Daubert* motion found at Docket No. 1610. Dr. Hesselink's  
12 opinion on Waymo's protections of its trade secrets is merely a recitation of information found in  
13 the declarations of fact witnesses, one of whom admits that he does not have any personal  
14 knowledge of the SVN server and that the other information he attested to does not apply to that  
15 server.

16 *Gary Brown and Kristinn Gudjonsson*

17 In addition to the objections stated above, Defendants object to any expert testimony by  
18 Gary Brown or Kristinn Gudjonsson for the reasons stated in Otto Trucking's *Daubert* motion  
19 found at Docket No. 1620. Mr. Brown and Mr. Gudjonsson's opinions are unreliable and  
20 misleading, and they do not have the requisite expertise to opine and testify about the SVN  
21 server.

22 **Testimony by Deposition**

23 Waymo has listed all or nearly all of the non-Waymo witnesses as potential witnesses to  
24 be called by deposition. Defendants object to each and every witness to the extent they do not  
25 meet the requirements of Federal Rule of Civil Procedure 32  
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1  
2 Dated: November 21, 2017

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8 OTTOMOTTO LLC  
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# EXHIBIT A



**EXHIBIT A TO DEFENDANTS' OBJECTIONS TO WAYMO'S WITNESS LIST**

Witness	Subject of Initial Disclosure	Subject of Trial Testimony	Objections
<b>Will Call List</b>			
Prabir Adarkar	Not Disclosed	Mr. Adarkar may be asked to provide non-cumulative testimony regarding Uber's financial forecasts for autonomous vehicles, and Uber's competitive relationship with Waymo, including its willingness to cut prices to compete with Waymo.	FRCP 26(a)(1) & 37(c)(1) FRE 403
Shawn Bananzadeh	Not Disclosed	Mr. Bananzadeh will provide noncumulative testimony regarding costs of development of, and management of Waymo's self-driving cars and autonomous vehicle technology. Waymo further identifies the subjects of the Rule 30(b)(6) topic(s) for which he was designated as Waymo's corporate witness.	Per Court's ruling, if Mr. Bananzadeh is allowed to testify at all, it will be as a rebuttal witness <i>only</i> —not in Waymo's case-in-chief. <i>See</i> Tr. 10/26/17; 12:1-7. FRCP 26(a)(1) & 37(c)(1) FRE 403
John Bares	Matters that concern misappropriation of trade secrets.	Mr. Bares will be asked to provide noncumulative testimony concerning Defendants misappropriation of Waymo's trade secrets, including their acquisition, use and disclosure, and the lack of independent development; acquisition of Otto; and Mr. Levandowski's employment milestones. <sup>1</sup>	FRCP 26(a)(1) & 37(c)(1)

<sup>1</sup> Where only a portion of a witnesses' testimony is subject to objection, the objectionable portions are highlighted in yellow.

Witness	Subject of Initial Disclosure	Subject of Trial Testimony	Objections
Gary Brown	Matters that concern the forensic investigation into misappropriation of trade secrets by Defendants via Anthony Levandowski, Sameer Kshirsagar, and Radu Raduta.	Mr. Brown will provide non-cumulative testimony concerning Google/Waymo's forensic investigation into misappropriation of trade secrets, particularly analysis of log data and hardware; Google/Waymo's reasonable efforts to maintain the secrecy of its electronic systems, digital document storage repositories, and computer networks, including but not limited to the SVN server. Waymo further identifies the subjects of the Rule 30(b)(6) topic(s) for which he was designated as Waymo's corporate witness.	FRCP 26(a)(1) & 37(c)(1) FRE 602 FRE 702
Dan Chu	Matters that concern Waymo, including investment in, development of, and management of Waymo's self-driving cars and autonomous vehicle technology; the current and future nature of the relevant markets and competition in the relevant markets, and other issues related to irreparable harm and damages suffered by Waymo.	Mr. Chu will provide non-cumulative testimony regarding matters that concern Waymo, including investment in, development of, and management of Waymo's self-driving cars and autonomous vehicle technology; the current and future nature of the relevant markets and competition in the relevant markets, and other issues related to irreparable harm and damages suffered by Waymo, Waymo's short-term and long-term business plans, Waymo's early rider program in Phoenix, Waymo's launch of its TaaS service, and Waymo's understanding of the TaaS market (including competition in that market and Waymo's competitive advantages). Waymo further identifies the subjects of the Rule 30(b)(6) topic(s) for which he was designated as Waymo's corporate witness.	FRCP 26(a)(1) & 37(c)(1) FRE 602
Dmitri Dolgov	Matters that concern Waymo, including the history, development, and management of Waymo's self-driving cars and autonomous vehicle technology; the design and development of certain of Waymo's asserted trade secrets	Dr. Dolgov will provide non-cumulative testimony regarding the development of Waymo's self-driving car technology, including its LIDAR designs and associated self-driving vehicle software development; the development of certain of Waymo's trade secrets, Waymo's engineering practices, and the Chauffeur Bonus Plan. Waymo further identifies the subjects of the Rule 30(b)(6) topic(s) for which he was designated as Waymo's corporate witness.	FRCP 26(a)(1) & 37(c)(1) FRE 602

Witness	Subject of Initial Disclosure	Subject of Trial Testimony	Objections
Pierre-Yves Droz	Matters that concern the development and operation of Waymo's self-driving cars and autonomous vehicle technology, including LiDAR; the design and development of certain of Waymo's asserted trade secrets; conception, reduction to practice, and patenting of the inventions of U.S. Patent Nos. 8,836,922 ("the '922 patent"), 9,285,464 ("the '464 patent"), 9,368,936 ("the '936 patent"), and 9,086,273 ("the '273 patent").	Mr. Droz will provide non-cumulative testimony regarding the development of Waymo's self-driving car technology, including its LIDAR designs and the development of Waymo's trade secrets, time to develop Waymo's LIDAR designs and trade secrets, engineering practices of Waymo and the LIDAR team regarding the confidentiality of its designs and measures to keep them secret, the contents of Waymo's SVN server, and communications with Anthony Levandowski regarding Uber and formation of Otto. Waymo further identifies the subjects of Mr. Droz's prior declarations submitted in this matter, Dkt. 25-31, 453-3 as subject he may testify about as well as the Rule 30(b)(6) topics for which he was designated as Waymo's corporate witness.	FRCP 26(a)(1) & 37(c)(1) FRE 602
John Gardner	Matters that concern misappropriation of trade secrets.	Mr. Gardner will be asked to provide noncumulative testimony regarding Ottomotto and Otto Trucking; the Uber-Otto acquisition; Mr. Levandowski's businesses; the Stroz due diligence analysis, investigation, and report; the misappropriation of Waymo trade secrets; destruction of relevant evidence; and Tyto LiDAR.	FRCP 26(a)(1) & 37(c)(1) FRE 403
Dan Gruver	Matters that concern misappropriation of trade secrets and patent infringement by Defendants; conception, reduction to practice, and patenting of the inventions of the '922, '464, and '273 patents.	Mr. Gruver will be asked to provide noncumulative testimony regarding Defendants' misappropriation of Waymo's trade secrets, including their acquisition, use and disclosure, and the lack of independent development; and the development of Waymo's self-driving car technology, including its LIDAR designs.	FRCP 26(a)(1) & 37(c)(1)

Witness	Subject of Initial Disclosure	Subject of Trial Testimony	Objections
Bill Gurley	Not Disclosed	Mr. Gurley will be asked to provide noncumulative testimony regarding Uber's acquisition of Otto; board meetings, discussions, and knowledge concerning the Otto acquisition including Mr. Kalanick and others' representations; facts surrounding Mr. Kalanick and board discussions concerning his termination; negotiations with Mr. Kalanick concerning the Otto acquisition and his resignation; Stroz due diligence report; and representations made by Mr. Kalanick regarding the Stroz report and Otto acquisition; and Benchmark's claim that Mr. Kalanick committed fraud and breached his fiduciary duty with respect to the Otto acquisition.	FRCP 26(a)(1) & 37(c)(1) FRE 402 FRE 403 MIL 24
Jeff Holden	Matters that concern misappropriation of trade secrets.	Mr. Holden will be asked to provide noncumulative testimony regarding the state of Uber's autonomous vehicle program before the Otto acquisition; negotiations with Mr. Levandowski regarding the acquisition; Mr. Levandowski's consulting work; facts surrounding Mr. Levandowski's continued employment with Uber and termination; and Defendants' misappropriation of Waymo's trade secrets.	FRCP 26(a)(1) & 37(c)(1)
Travis Kalanick	Matters that concern misappropriation of trade secrets and patent infringement by Defendants.	Mr. Kalanick will be asked to provide non-cumulative testimony regarding Uber's driverless car program; Uber's solicitation of Google and Waymo employees; discussions with, knowledge about, Levandowski, discussions with the Board and Benchmark partners concerning the Otto acquisition, Mr. Levandowski, and the relationship between the facts surrounding this case and his termination; negotiations with Mr. Levandowski regarding the founding of Ottomotto and Otto Trucking, and Otto acquisition; the Uber-Otto acquisition; solicitation of Google/Waymo employees; the Stroz due diligence analysis, investigation, and report; Uber's knowledge of stolen documents, understanding, and activity related to misappropriation of Google/Waymo trade secret and proprietary information; Levandowski's employment and continued employment at Uber; and destruction of relevant evidence.	FRCP 26(a)(1) & 37(c)(1) FRE 402 FRE 403 MIL 24

Witness	Subject of Initial Disclosure	Subject of Trial Testimony	Objections
John Krafcik	Not Disclosed	Mr. Krafcik will provide non-cumulative testimony regarding Waymo's business; Anthony Levandowski, and his departure from Google; the relationship between Waymo and Google; and Waymo's development of its TaaS service, and valuations of Chauffeur.	FRCP 26(a)(1) & 37(c)(1) FRE 602
Anthony Levandowski	Matters that concern misappropriation of trade secrets and patent infringement by Defendants; conception, reduction to practice, and patenting of the inventions of the '922 and '464 patents	Mr. Levandowski will be asked to provide non-cumulative testimony regarding the development of Waymo's self-driving car technology, including its LIDAR designs and the development of Waymo's trade secrets, engineering practices of Waymo and the LIDAR team regarding the confidentiality of its designs and measures to keep them secret, his performance at Waymo, the contents of Waymo's SVN server, and communications with Google employees regarding Uber and formation of Otto; Uber's driverless car program; Uber's solicitation of Google and Waymo employees; the relationship between the facts surrounding this case and his termination; negotiations regarding the founding of Ottomotto and Otto Trucking, and Otto acquisition; the Uber-Otto acquisition; the Stroz due diligence analysis, investigation, and report; Uber's knowledge of stolen documents, understanding, and activity related to misappropriation of Google/Waymo trade secret and proprietary information; Levandowski's employment and continued employment at Uber; and destruction of relevant evidence. Waymo further identifies those subjects identified in Waymo's Statement Regarding Questions it Intends to Ask Anthony Levandowski at Trial. Dkt. 835.	FRCP 26(a)(1) & 37(c)(1) FRE 402 FRE 403
Brian McClendon	Matters that concern misappropriation of trade secrets and patent infringement by Defendants.	Mr. McClendon will be asked to provide non-cumulative testimony regarding solicitation of and negotiations with Levandowski regarding founding Ottomotto and Otto Trucking; and the Uber-Otto acquisition, the development of Uber's self-driving technology, including before the Otto acquisition, Defendants' misappropriation of Waymo's trade secrets, including their acquisition, use and disclosure, and the lack of independent development.	FRCP 26(a)(1) & 37(c)(1) FRE 403 FRE 402

Witness	Subject of Initial Disclosure	Subject of Trial Testimony	Objections
Gaetan Pennecot	Matters that concern misappropriation of trade secrets and patent infringement by Defendants; conception, reduction to practice, and patenting of the inventions of the '922, '464, and '273 patents.	Mr. Pennecot will be asked to provide non-cumulative testimony regarding Defendants' misappropriation of Waymo's trade secrets, including their acquisition, use and disclosure, and the lack of independent development; the development of Waymo's self-driving car technology, including its LIDAR designs.	FRCP 26(a)(1) & 37(c)(1)
Cameron Poetzscher	Matters that concern misappropriation of trade secrets	Mr. Poetzcher will be asked to provide non-cumulative testimony regarding Uber's negotiations with Mr. Levandowski regarding the formation of Ottomotto/Otto Trucking; and the acquisition; solicitation of Google/Waymo employees; destruction of relevant evidence; and the Stroz due diligence analysis investigation, and report.	FRCP 26(a)(1) & 37(c)(1) FRE 403
Nina Qi	Matters that concern misappropriation of trade secrets.	Ms. Qi will be asked to provide noncumulative testimony regarding Uber's decision to acquire Ottomotto (and to enter into an option to acquire Otto Trucking); contacts between Uber and Mr. Levandowski regarding the formation of Ottomotto / Otto Trucking, Uber's acquisition of those entities, and the benefits that Uber would obtain via those acquisitions; Uber's solicitation of Google/Waymo employees; and Uber's internal views on those subjects, destruction of relevant evidence; and the Stroz due diligence analysis, investigation, and report.	FRCP 26(a)(1) & 37(c)(1) FRE 403
Lior Ron	Matters that concern misappropriation of trade secrets and patent infringement by Defendants.	Mr. Ron will be asked to provide noncumulative testimony regarding the misappropriation of Waymo trade secrets; founding of Ottomotto and Otto Trucking; the Uber-Otto acquisition; the Stroz due diligence analysis, investigation, and report; and the business and product development of Ottomotto and Otto Trucking, destruction of relevant evidence.	FRCP 26(a)(1) & 37(c)(1) FRE 403
Eric Tate	Matters that concern misappropriation of trade secrets	Mr. Tate will be asked to provide noncumulative testimony regarding the Uber-Otto acquisition; the Stroz due diligence analysis, investigation, and report; and destruction of relevant evidence.	FRE 403

Witness	Subject of Initial Disclosure	Subject of Trial Testimony	Objections
Salle Yoo	Matters that concern misappropriation of trade secrets	Ms. Yoo will be asked to provide noncumulative testimony regarding the Uber-Otto acquisition; the Stroz due diligence analysis investigation, and report; continued employment and termination of Anthony Levandowski; and Defendants misappropriation of Waymo's trade secrets, destruction of relevant evidence.	FRCP 26(a)(1) & 37(c)(1) FRE 403
Sasha Zbrozek	Not Disclosed	Mr. Zbrozek will provide non-cumulative testimony concerning Google/Waymo's forensic investigation, particularly the SVN server and related log data, including Mr. Levandowski's download of the 14,000 files from the SVN server; Google/Waymo's reasonable efforts to maintain the secrecy of its electronic systems, digital document storage repositories, and computer networks.	FRCP 26(a)(1) & 37(c)(1) FRE 602
May Call List			
Chelsea Bailey	Not Disclosed	Ms. Bailey will provide noncumulative testimony regarding the Chauffeur Bonus Plan; Mr. Levandowski's departure from Google, including Google's collection of Levandowski's laptops and delivery of those laptops to the Google forensics team; and Mr. Levandowski's performance as a Google/Waymo employee	FRCP 26(a)(1) & 37(c)(1)
Travis Bellanger	Not Disclosed	Mr. Bellanger will provide non-cumulative testimony concerning Google/Waymo's forensic investigation into the activities of Anthony Levandowski, including Google's collection of Levandowski's laptops and delivery of those laptops to the Google forensics team	FRCP 26(a)(1) & 37(c)(1)
Adam Bentley	Matters that concern misappropriation of trade secrets	Mr. Bentley will be asked to provide non-cumulative testimony regarding the Uber-Otto acquisition; the Stroz due diligence analysis, investigation, and report; and destruction of relevant evidence.	FRE 403

Witness	Subject of Initial Disclosure	Subject of Trial Testimony	Objections
Matthew Blattmachr	Not Disclosed	Mr. Blattmachr will be asked to provide non-cumulative testimony regarding the ownership of Levandowski's companies	FRCP 26(a)(1) & 37(c)(1)
Don Burnette	Matters that concern misappropriation of trade secrets and patent infringement by Defendants.	Mr. Burnette will be asked to provide non-cumulative testimony concerning Defendants misappropriation of Waymo's trade secrets, including their acquisition, use and disclosure, and the lack of independent development; the development of Waymo's self-driving car technology, including its LIDAR designs and planner software; due diligence by Stroz for Otto acquisition by Uber; and destruction of relevant evidence.	FRCP 26(a)(1) & 37(c)(1) FRE 403
Neel Chatterjee	Not Disclosed	Mr. Chatterjee will be asked to provide non-cumulative testimony regarding Goodwin Procter's possession of misappropriated materials; destruction of relevant evidence; chain of custody of Anthony Levandowski's personal laptops, and searches thereof.	FRCP 26(a)(1) & 37(c)(1) FRE 403
Gerard Dwyer	Not Disclosed	Mr. Dwyer will provide noncumulative testimony regarding inputs to Waymo's current P&L. He may also provide testimony regarding Waymo's current business plan.	FRCP 26(a)(1) & 37(c)(1)
Arturo Gonzalez	Not Disclosed	Mr. Gonzalez will be asked to provide non-cumulative testimony regarding MoFo's possession of misappropriated materials; destruction of relevant evidence; and Defendants' knowledge of same. As Waymo previously advised Uber, Waymo does not intend to call Mr. Gonzalez as a witness unless Defendants open the door by claiming that they complied with their discovery obligations.	FRCP 26(a)(1) & 37(c)(1) FRE 403 FRE 402 FRE 602
Kristin Gudjonsson	Not Disclosed	Mr. Gudjonsson will provide noncumulative testimony concerning Google/Waymo's forensic investigation into misappropriation of trade secrets, particularly analysis of hardware; Google/Waymo's reasonable efforts to maintain the secrecy of its electronic systems, digital document storage repositories, and computer networks, including but not limited to	FRCP 26(a)(1) & 37(c)(1) FRE 602 FRE 702



Witness	Subject of Initial Disclosure	Subject of Trial Testimony	Objections
		the SVN server	
Gautam Gupta	Not Disclosed	Mr. Gupta will be asked to provide non-cumulative testimony regarding Uber's acquisition of Ottomotto and Uber's funding of Otto Trucking's business activities.	FRCP 26(a)(1) & 37(c)(1) FRE 402 FRE 403
Don Harrison	Not Disclosed	Mr. Harrison will provide noncumulative testimony regarding Google's mergers and acquisitions, including the negotiation and drafting of Google's merger and acquisition agreements, the process of conducting valuations, and Waymo's valuations.	FRCP 26(a)(1) & 37(c)(1)
Jennifer Haroon	Not Disclosed	Ms. Haroon will provide noncumulative testimony regarding details of Waymo's first P&L, the negotiation of the valuation used in connection with the Chauffeur Business Plan, the timing of payments made under the Chauffeur Business Plan, and the 409(a) valuation conducted when Waymo was spun off from Google. Ms. Haroon may also provide testimony regarding the evolution of Waymo's business plan over time. Waymo further identifies the subjects of the Rule 30(b)(6) topic(s) for which she was designated as Waymo's corporate witness.	FRCP 26(a)(1) & 37(c)(1) FRE 602
Soren Juelsgaard	Matters that concern misappropriation of trade secrets and patent infringement by Defendants	Mr. Juelsgaard will be asked to provide non-cumulative testimony concerning Defendants misappropriation of Waymo's trade secrets, including their acquisition, use and disclosure, and the lack of independent development; the development of Waymo's self-driving car technology, including its LIDAR designs and software; due diligence by Stroz for Otto acquisition by Uber; and destruction of relevant evidence.	FRCP 26(a)(1) & 37(c)(1)
Rudy Kim	Matters that concern misappropriation of trade secrets.	Mr. Kim will be asked to provide noncumulative testimony regarding the Uber-Otto acquisition; the Stroz due diligence analysis, investigation, and report; and destruction of relevant evidence.	FRE 403

Witness	Subject of Initial Disclosure	Subject of Trial Testimony	Objections
Asheem Linaval	Matters that concern misappropriation of trade secrets and patent infringement by Defendants.	Mr. Linaval will be asked to provide non-cumulative testimony concerning Defendants misappropriation of Waymo's trade secrets, including their acquisition, use and disclosure, and the lack of independent development; the development of Waymo's self-driving car technology, including its LIDAR designs.	FRCP 26(a)(1) & 37(c)(1)
David Lawee	Not Disclosed	Mr. Lawee will provide noncumulative testimony regarding Google's mergers and acquisitions, including the negotiation and drafting of Google's merger and acquisition agreements, the process of conducting valuations, Waymo's valuations, and the Chauffeur Bonus Plan. Waymo further identifies the subjects of the Rule 30(b)(6) topic(s) for which he was designated as Waymo's corporate witness.	FRCP 26(a)(1) & 37(c)(1) FRE 602
Max Levandowski	Matters that concern misappropriation of trade secrets and patent infringement by Defendants	Mr. Levandowski will be asked to provide noncumulative testimony concerning Defendants misappropriation of Waymo's trade secrets, including their acquisition, use and disclosure, and the lack of independent development; the development of Waymo's self-driving car technology, including its LIDAR designs.	10/26/2017 Hr'g at 13:9-14
Emil Michael	Matters that concern misappropriation of trade secrets	Mr. Michael will be asked to provide noncumulative testimony regarding the negotiations with Levandowski regarding founding Ottomotto and Otto Trucking; the Uber-Otto acquisition; Levandowski's employment and continued employment at Uber; discussions with, knowledge about, Levandowski, discussions with the Board and Benchmark partners concerning the Otto acquisition, Mr. Levandowski, and the relationship between the facts surrounding this case and his termination.	FRCP 26(a)(1) & 37(c)(1) FRE 403 FRE 402 MIL 24
Rhian Morgan	Matters that concern misappropriation of trade secrets.	Ms. Morgan will be asked to provide noncumulative testimony regarding the founding and business of Ottomotto and Otto Trucking; Uber's acquisition of Otto; and the Stroz due diligence analysis, investigation, report; Defendants misappropriation of Waymo's trade secrets, destruction of relevant evidence.	FRCP 26(a)(1) & 37(c)(1)

Witness	Subject of Initial Disclosure	Subject of Trial Testimony	Objections
Daniel Ratner	Not Disclosed	Mr. Ratner will be asked to provide non-cumulative testimony concerning Defendants misappropriation of Waymo's trade secrets, including their acquisition, use and disclosure, and the lack of independent development; the development of Waymo's self-driving car technology, including its LIDAR designs.	10/26/2017 Hr'g at 13:9-14
Bryan Salesky	Matters that concern the development and operation of Waymo's self-driving cars and autonomous vehicle technology; matters that concern misappropriation of trade secrets by Defendants.	Mr. Salesky will provide non-cumulative testimony regarding the history of Google/Waymo's self-driving-car development efforts; Mr. Levandowski's performance as a Google/Waymo employee; certain of Mr. Levandowski's communications with Uber prior to his departure from Google/Waymo	FRCP 26(a)(1) & 37(c)(1)
Brent Schwarz	Matters that concern misappropriation of trade secrets.	Mr. Schwarz will be asked to provide non-cumulative testimony regarding Defendants misappropriation of Waymo's trade secrets, including their acquisition, use and disclosure, and the lack of independent development; regarding Tyto LiDAR and Otto's acquisition of Tyto.	FRCP 26(a)(1) & 37(c)(1)
Colin Sebern	Matters that concern misappropriation of trade secrets and patent infringement by Defendants.	Mr. Sebern will be asked to provide non-cumulative testimony concerning Defendants misappropriation of Waymo's trade secrets, including their acquisition, use and disclosure, and the lack of independent development; the development of Waymo's self-driving car technology, including its LIDAR designs and software; due diligence by Stroz for Otto acquisition by Uber.	FRCP 26(a)(1) & 37(c)(1)
Ognen Stojanovski	Matters that concern misappropriation of trade secrets	Mr. Stojanovski will be asked to provide non-cumulative testimony regarding Defendants misappropriation of Waymo's trade secrets, including their acquisition, use and disclosure, and the lack of independent development; regarding Tyto LiDAR and Otto's acquisition of Tyto; regarding communications with Mr. Levandowski regarding Tyto LIDAR and other businesses related to Mr. Levandowski.	FRCP 26(a)(1) & 37(c)(1)
Chris Urmson	Matters that concern the development and operation of Waymo's self-driving cars and autonomous vehicle technology, including LiDAR; matters	Mr. Urmson will provide non-cumulative testimony regarding the history and development of Waymo's self-driving car technology, including its LIDAR designs; Mr. Levandowski's performance at Google and circumstances surrounding his	FRCP 26(a)(1) & 37(c)(1)

Witness	Subject of Initial Disclosure	Subject of Trial Testimony	Objections
	that concern misappropriation of trade secrets by Defendants.	termination from Google; Chauffeur Bonus Plan; Waymo valuation(s).	